

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MARLIN LUSTGRAAF,

Plaintiff,

vs.

SUNSET FINANCIAL SERVICES,  
INC., and BRYAN S. BEHRENS,

Defendants.

8:08-CV-335

ORDER

JEAN (J.P.) POOLE & DEE POOLE,  
TRUSTEES OF THE POOLE  
FAMILY TRUST,

Plaintiffs,

vs.

SUNSET FINANCIAL SERVICES,  
INC., and BRYAN S. BEHRENS,

Defendants.

8:08-CV-399

ORDER

BARBARA M. VACANTI,  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF MILO VACANTI,

Plaintiff,

vs.

SUNSET FINANCIAL SERVICES,  
INC., and BRYAN S. BEHRENS,

Defendants.

8:08-CV-436

ORDER

WILLIAM GREEN AND JOANN  
GREEN,

Plaintiffs,

vs.

SUNSET FINANCIAL SERVICES,  
INC., and BRYAN S. BEHRENS,

Defendants.

8:09-CV-13

ORDER

BARBARA M. VACANTI,  
PERSONAL REPRESENTATIVE OF  
THE ESTATE OF MILO VACANTI,

Plaintiff,

vs.

SUNSET FINANCIAL SERVICES,  
INC., and BRYAN S. BEHRENS,

Defendants.

8:09-CV-44

ORDER

This matter is before the Court on the motions for leave jointly filed by the plaintiffs and defendant and third-party plaintiff Sunset Financial Services requesting that the Court enter an order determining that they may voluntarily dismiss their claims against defendant Bryan S. Behrens, and that the case need not be referred to the bankruptcy court based on Behrens' pending bankruptcy proceeding. Case no. 8:08-cv-335 filing [383](#); case no. 8:08-cv-399 filing [378](#); case no. 8:08-cv-436 filing [369](#); case no. 8:09-cv-13 filing [349](#); case no. 8:09-cv-44 filing [289](#). The motions will be granted.

The Court agrees with the filing parties that they are not precluded by the automatic bankruptcy stay from voluntarily dismissing their claims against Behrens, as such a dismissal is not a "continuation" of a proceeding against the debtor within the meaning of [11 U.S.C. § 362\(a\)\(1\)](#). See *Dennis v. A.H. Robins Co., Inc.*, 860 F.2d 871, 872 (8th Cir. 1988); see also *O'Donnell v. Vencor Inc.*, 466 F.3d 1104, 1110-11 (9th Cir. 2006). In light of the parties'

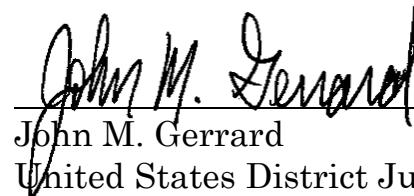
representation that the claims against Behrens are to be voluntarily dismissed, the Court elects not to refer this matter to the bankruptcy court at this time. The parties are advised, however, that for jurisdictional reasons, Behrens should be dismissed as a party to each of the above-captioned cases before the Court can act on the parties' other claims. The parties are invited to do so as soon as is practicable.

IT IS ORDERED:

1. The parties' motions for leave (case no. 8:08-cv-335 filing 383; case no. 8:08-cv-399 filing 378; case no. 8:08-cv-436 filing 369; case no. 8:09-cv-13 filing 349; case no. 8:09-cv-44 filing 289) are granted.
2. The above-captioned cases will not be referred to bankruptcy at this time.

Dated this 11th day of June, 2013.

BY THE COURT:



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John M. Gerrard  
United States District Judge